



P.O. Box 2749
Sacramento, CA 95812-2749
TTY: For Speech & Hearing Impaired (916) 795-3240
(916) 795-3400

Item 3, September 13, 2010
Attachment 2

June 14, 2010

AGENDA ITEM 4

TO: MEMBERS OF THE INVESTMENT COMMITTEE

- I. SUBJECT:** Public Hearing and Adoption of Regulation Relating to Disclosure of Placement Agent Fees
- II. PROGRAM:** Total Fund
- III. RECOMMENDATION:** Staff recommends that, subject to the results of the public hearing, the Committee adopt proposed Regulation 559 Disclosure of Placement Agent Fees, Gifts, and Campaign Contributions

IV. ANALYSIS:

On March 15, 2010, the Investment Committee ("Committee") authorized staff to proceed with formal rulemaking pursuant to the California Administrative Procedure Act to add a new section to the California Code of Regulations addressing placement agents. The proposed regulation largely mirrors the Policy for Disclosure of Placement Agent Fees, Gifts and Campaign Contributions adopted by the Committee on May 11, 2009 and thereafter revised on November 16, 2009. The proposed regulation and related documents to implement the proposed regulation are attached as Attachment 1.

The *Notice of Proposed Regulatory Action* ("Notice") was published in the California Regulatory Notice Register (CRNR) 2010, No. 14-Z, April 2, 2010, the Office of Administrative Law ("OAL") Office File Number Z-2010-0323-04. The Notice set a hearing date of May 17, 2010 and a written comment period ending May 17, 2010. On April 30, 2010, a *Notice of Rescheduled Public Hearing, Extension of Written Comment Period and Revised Initial Statement of Reasons* was filed to reschedule the written comment period end date and the public hearing to June 14, 2010. A revised initial statement of reasons was also filed on April 30, 2010. The original notice, the supplemental notice, and the revised initial statement of reasons are attached as Attachment 2.

CalPERS received two written comments as of the date this agenda item was prepared. No changes to the regulation are being proposed in response to the comments. The comments and staff's responses to those comments are attached as Attachment 3.

The purpose of the public hearing is to allow the public to present testimony regarding the proposed regulatory action. The Committee is not required to respond to these comments during the hearing; rather, all comments must receive a response from CalPERS as part of the final rulemaking file.

As discussed with and approved by the Committee in March, the substance of the proposed regulation is the same as the Policy with a few exceptions. First, the definition of Placement Agent will exclude from that term:

... any employee, officer, director, equity holder, partner, member, or trustee of an External Manager who spends one-third or more of his or her time during a calendar year managing the assets controlled by the External Manager. (See, definition of placement agent, subsection (a)(6) of the proposed regulation.)

This change was made to clarify that bona fide investment personnel working for an external manager are not intended to be included within the definition of placement agent. This definition of placement agent is consistent with the definition that CalPERS is seeking to include in Assembly Bill 1743 (Hernandez) - the bill that would require placement agents to register as lobbyists.

Second, the proposed regulation clarifies the timing of certain disclosures to the public by CalPERS pursuant to the Policy, and permits disclosure to be made in closed session if the disclosure relates to a proposed investment and disclosure would impair CalPERS ability to maximize investment returns. The proposed regulation states that:

... CalPERS staff may provide the required disclosure confidentially to the Investment Committee if disclosure involves a proposed investment and public disclosure will impair CalPERS ability to maximize its investment returns. In such cases, disclosure will be made at the first open meeting of the Investment Committee that is held after the final decision is made whether to invest with the External Manager. The disclosure will include a detailed explanation why the disclosure was originally made confidentially. (See subsection (d)(9) of the proposed regulation.)

Third, the proposed regulation has been clarified to allow for payment of certain obligations to a third party lender with respect to debts secured by a CalPERS commitment. This clarification allows CalPERS to honor its binding commitments

to third party lenders who are not responsible for violations of the Policy. (See subsection (d)(4)(b) of the proposed regulation.)

Finally, additional limitations on when exceptions to the Policy have been added to the proposed regulation. First, subsection (d)(6) permits a reduction of the "time-out" remedy when the violation is immaterial and unintentional, provided that a reduction of the penalty is consistent with the Board's fiduciary obligations. Second, the provision of the Policy that allows the Committee, or in some instances, the CIO, to approve exceptions to the Policy has been revised to allow such exceptions only if the exception is consistent with the Board's fiduciary duties and provided that the exception is fully disclosed to the public. (See subsection (h) of the proposed regulation.)

At the conclusion of the public hearing, the Committee can adopt the proposed regulation. If the Committee decides to adopt the proposed regulation, the rulemaking file will be forwarded to OAL for review and approval. Once OAL has approved the proposed regulation, it will be forwarded to the Secretary of State for filing and publication in the California Code of Regulations. The proposed regulation will become effective 30 days after filing with the Secretary of State.

The Committee may alternatively make changes to the proposed regulation in response to public comments or for any other reason. Depending on the materiality of the changes, additional notice periods may be necessary before final adoption can occur.

Below is an updated regulatory timeline for final adoption.

March 15, 2010		Agenda item to the Investment Committee
March 23, 2010		CalPERS submits regulation package to OAL
April 2, 2010		OAL publishes notice of regulatory change in the California Regulatory Notice Registry
April 30, 2010		CalPERS files Notice of Rescheduled Public Hearing, Extension of Public Comment Period and Revision of Initial Statement of Reasons
April 30, 2010 – June 14, 2010		Rescheduled 45 Day comment period on the proposed regulation
June 14, 2010		Public hearing and agenda item requesting the Committee to adopt the regulation.
June 28, 2010		If no changes, submit final package to OAL
July 28, 2010		Deadline for OAL approval or denial of regulation (OAL gets 30 days from submission)
July 28, 2010		If approved, OAL files regulation with Secretary of State
July 28, 2010		Regulations effective.

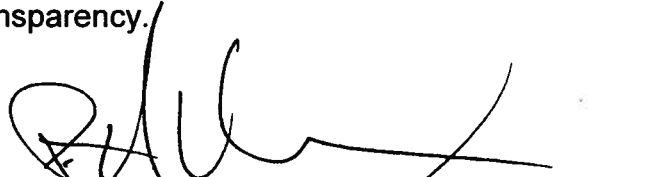
The timeline may be delayed if changes are required after the initial public comment period to accommodate additional notice periods or public hearings depending on the materiality of the changes made. In addition, OAL review may cause delays in the rulemaking process.

V. STRATEGIC PLAN:

This item supports Goal VIII: Manage the risk and volatility of assets and liabilities to ensure sufficient funds are available, first, to pay benefits and second, to minimize and stabilize contributions.

VI. RESULTS/COSTS:

The results of this item will provide CalPERS with enhanced efficiencies and ability to manage the overall portfolio. The new policy will provide a foundation for compliance, accountability, and transparency.



PETER H. MIXON
General Counsel
Legal Office

JANINE GUILLOT
Chief Operating Investment Officer

JOSEPH A. DEAR
Chief Investment Officer

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PROPOSED ADDITION OF

SECTION 559. DISCLOSURE OF PLACEMENT AGENT FEES, GIFTS AND
CAMPAIGN CONTRIBUTIONS

TO

ARTICLE 2 OF CHAPTER 2 OF DIVISION 1 OF TITLE 2 OF THE CALIFORNIA
CODE OF REGULATIONS

(a) Definitions:

1. *Amendment.* Amendment means any modification to an agreement with an External Manager (including by a vote, consent, or waiver by the limited partners/investors or a subset of the limited partners/investors, or separate side agreement or amendment to a side agreement) to continue, terminate, or extend the term of the agreement or the investment period, increase the commitment of funds by CalPERS, or increase or accelerate the fees or compensation payable to the External Manager.
2. *CalPERS Vehicle.* CalPERS Vehicle means a partnership, limited partnership, limited liability company or other investment vehicle managed by an External Manager in which CalPERS is the majority (or greater) investor and that is organized in order to invest in other External Managers, i.e., a fund of funds.
3. *CalPERS Vehicle Manager.* CalPERS Vehicle Manager means the general partner, managing member, or investment manager of a CalPERS Vehicle.
4. *Consultant.* Consultant means an individual or firm, and includes Key Personnel of Consultant firms who are contractually retained or have been appointed to a pool by CalPERS to provide investment advice to CalPERS but who do not exercise investment discretion.
5. *External Manager.* External Manager means an asset management firm that is seeking to be, or has been, retained by CalPERS or by a CalPERS Vehicle to manage a portfolio of assets (including securities) for a fee. The External Manager usually has full discretion to manage CalPERS assets, consistent with investment management guidelines provided by CalPERS and fiduciary responsibility. A CalPERS Vehicle Manager is an External Manager.
6. *Placement Agent.* Placement Agent means any person or entity hired, employed, engaged or retained by or acting on behalf of an External

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Manager or on behalf of another Placement Agent as a finder, solicitor, marketer, Consultant, broker or other intermediary to raise money or investments from, or to obtain access to, CalPERS directly or indirectly including, without limitation, through a CalPERS Vehicle. A Placement Agent shall not include any employee, officer, director, equity holder, partner, member, or trustee of an External Manager who spends one-third or more of his or her time, during a calendar year, managing the assets controlled by the External Manager.

7. Placement Agent Information Disclosure. Placement Agent Information Disclosure is defined in subsection (b)(1).

(b) Each External Manager and CalPERS Vehicle Manager is responsible for:

1. Providing the following information (collectively, the "Placement Agent Information Disclosure") to CalPERS staff or, if applicable, to the CalPERS Vehicle Manager within 45 days of the time investment discussions are initiated by the External Manager or the CalPERS Vehicle Manager, but in any event, prior to the completion of due diligence. In the case of an Amendment, the Placement Agent Information Disclosure is required prior to execution of the Amendment:
 - a. A statement whether the External Manager, or any of their principals, employees, agents or affiliates has compensated or agreed to compensate, directly or indirectly, any person (whether or not employed by the External Manager or the CalPERS Vehicle Manager) or entity to act as a Placement Agent in connection with the investment by CalPERS or a CalPERS Vehicle.
 - b. A resume for each Placement Agent detailing the person's education, professional designations, regulatory licenses and investment and work experience. If any such person is a current or former CalPERS Board member, employee or Consultant or a member of the immediate family of any such person, this fact shall be specifically noted. When an entity is retained as a Placement Agent, any officer, director, or employee actively providing placement agent services with regard to CalPERS or receiving more than 15% of the placement agent fees shall provide information required by this subsection.
 - c. A description of any and all compensation of any kind provided or agreed to be provided to a Placement Agent, including the nature, timing and value thereof.

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- d. A description of the services to be performed by the Placement Agent and a statement as to whether the Placement Agent is utilized by the External Manager with all prospective clients or only with a subset of the External Manager's prospective clients.
 - e. A written copy of any and all agreements between the External Manager and the Placement Agent.
 - f. The names of any current or former CalPERS Board members, employees, or Consultants who suggested the retention of the Placement Agent.
 - g. A statement that the Placement Agent (or any of its affiliates, as applicable) is registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or, if appropriate, the Commodity Futures Trading Commission, and the details of such registration. If, however, the Placement Agent is located and operates outside of the United States and interacts exclusively with CalPERS Vehicles formed and operated outside of the United States, then the statement may indicate that the Placement Agent (or any of its affiliates as applicable) is registered with a recognized non-U.S. financial regulatory authority and the details of such non-U.S. registration.
 - h. A statement whether the Placement Agent, or any of its affiliates, is registered as a lobbyist with any state or national government.
- 2. Providing an update of any changes to any of the information included in the Placement Agent Information Disclosure within 14 calendar days of the date that the External Manager knew or should have known of the change in information.
 - 3. Representing and warranting the accuracy of the information included in the Placement Agent Information Disclosure in any final written agreement with a continuing obligation to update any such information within 14 calendar days of the date that the External Manager knew or should have known of any change in the information. A CalPERS Vehicle Manager does not need to represent and warrant as to the accuracy of information provided to them by an External Manager with whom the CalPERS Vehicle invests.

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- (c) Each Placement Agent shall, prior to acting as a Placement Agent, disclose to CalPERS (1) all campaign contributions made by the Placement Agent to any elected CalPERS Board Member during the prior 24-month period and (2) all gifts, as defined in Government Code section 82028, given by the Placement Agent to any CalPERS Board Member during the prior 24-month period. Additionally, any subsequent campaign contribution or gift made by the Placement Agent to any elected CalPERS Board Member during the time the Placement Agent is receiving compensation in connection with a CalPERS investment shall also be disclosed.
- (d) CalPERS staff and CalPERS Vehicle Managers are responsible for all of the following except as specified below:
1. Providing External Managers with a copy of this regulation at the time that discussions are initiated with respect to a prospective investment or engagement.
 2. Confirming that the Placement Agent Information Disclosure has been received within 45 days of the time investment discussions are initiated, but in any event, prior to the completion of due diligence and any recommendation to proceed with the contract or Amendment.
 3. For new contracts and Amendments, declining the opportunity to retain or invest with the External Manager if the Placement Agent Information Disclosure reveals that the External Manager has used a Placement Agent that is not registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or, if appropriate, the Commodity Futures Trading Commission. Notwithstanding the above, CalPERS Vehicle Managers may invest in External Managers where the Placement Agent is registered with a recognized non-U.S. financial regulatory authority consistent with subsection (b).1.g.
 4. For new contracts and Amendments, securing the agreement of the External Manager in the final written agreement between CalPERS or the CalPERS Vehicle and the External Manager to provide CalPERS or the CalPERS Vehicle the following remedies in the event the External Manager or CalPERS Vehicle Manager knew or should have known of any material omission or inaccuracy in the Placement Agent Information Disclosure or any other violation of this section:
 - a. Whichever is greater, the reimbursement of any management or advisory fees paid by CalPERS for the prior two years or an amount equal to the amounts paid or

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promised to be paid to the Placement Agent as a result of the CalPERS or CalPERS Vehicle investment; and

- b. At CalPERS option and without any default, penalty or liability on the part of CalPERS to the External Manager or CalPERS Vehicle, the authority to terminate immediately the investment management contract or other agreement with the External Manager or CalPERS Vehicle, to withdraw without default, penalty or liability on the part of CalPERS to the limited partnership, limited liability company or other investment vehicle, or alternatively at CalPERS staff's discretion to cease making further capital contributions (and paying any fees on these recalled commitments) to the limited partnership, limited liability company or other investment vehicle without penalty; provided, however, that notwithstanding the foregoing, CalPERS shall pay when due all obligations due to a third party lender with respect to commitment debt secured by CalPERS' unfunded commitment.
5. For new contracts and Amendments, confirming that the final written agreement between CalPERS or the CalPERS Vehicle and the External Manager provides that the External Manager shall be solely responsible for, and CalPERS or a CalPERS Vehicle shall not pay (directly or indirectly), any fees, compensation or expenses for any Placement Agent used by the External Manager. A provision that allows the External Manager to pay Placement Agent fees or compensation from capital contributed by CalPERS or a CalPERS Vehicle with a corresponding reduction in the management fee payable with respect to CalPERS or the CalPERS Vehicle's investment shall not be regarded as a payment of the Placement Agent fee or compensation by CalPERS or the CalPERS Vehicle for purposes of this section.
6. Rejecting any External Manager or Placement Agent's solicitation for any new investment for five years after they have committed a violation of this section unless the Investment Committee reduces the penalty in an open session upon a showing that the violation was immaterial, unintentional, and that a reduction of the penalty is consistent with the fiduciary responsibilities of the Investment Committee as described in Article XVI, section 17 of the California Constitution.
7. Providing copies of the Placement Agent Information Disclosure to the CalPERS Senior Investment Officer for the asset class for

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which the External Manager performs investment services, the CalPERS Chief Investment Officer, the CalPERS Chief Executive Officer, the CalPERS Chief of the Office of Enterprise Compliance and CalPERS' General Counsel. The CalPERS Vehicle Manager shall only be responsible for providing a copy of the Placement Agent Information Disclosure to CalPERS staff.

8. Providing the Investment Committee with a copy of the Placement Agent Information Disclosure whenever the Investment Committee makes or approves the decision to invest with the External Manager. This obligation does not apply to the CalPERS Vehicle Manager.
 9. Compiling a monthly report containing the names and amounts of compensation agreed to be provided to each Placement Agent by each External Manager as reported in the Placement Agent Information Disclosures, providing the report to the Investment Committee, and disclosing the report to the public by posting it to the CalPERS website. The CalPERS Vehicle shall only be responsible for providing this information to CalPERS staff. The report will also include contributions and gifts to CalPERS Board Members reported by Placement Agents. Notwithstanding the above, CalPERS staff may provide the required disclosure confidentially to the Investment Committee if disclosure involves a proposed investment and public disclosure will impair CalPERS' ability to maximize its investment returns. In such cases, disclosure will be made at the first open meeting of the Investment Committee that is held after the final decision is made whether to invest with the External Manager. The disclosure will include a detailed explanation why the disclosure was originally made confidential.
 10. Reporting to the Investment Committee at least quarterly any material violations of this section. The CalPERS Vehicle shall only be responsible for providing this report to CalPERS staff.
- (e) External Managers and Placement Agents shall comply with this section and cooperate with CalPERS staff in meeting CalPERS staff's obligations under this section.
- (f) CalPERS staff is responsible for implementing this section for CalPERS Vehicles by seeking the written agreement of CalPERS Vehicle Managers to comply with this section. If any such CalPERS Vehicle does not agree in writing to comply with this section, CalPERS staff shall report to the Investment Committee the refusal.

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- (g) All parties responsible for implementing, monitoring and complying with this regulation should consider the spirit as well as the literal expression of its provisions. In cases where there is uncertainty whether a disclosure should be made, this regulation shall be interpreted to require disclosure.
- (h) Only the Investment Committee can grant exceptions to this regulation and any such exceptions shall be reported to the Investment Committee and the public within 60 days, except that the CalPERS Chief Investment Officer can agree to an exception for an Amendment, where the decision cannot be delayed until the next Investment Committee meeting. Any exceptions agreed to by the Chief Investment Officer shall be reported out to the public and the Investment Committee within 60 days. The Investment Committee and Chief Investment Officer shall only provide exceptions that are consistent with their fiduciary responsibilities as described in Article XVI, section 17 of the California Constitution, and provided further that all such exceptions are fully disclosed to the public.
- (i) The Placement Agent Information Disclosure and their attachments shall be public records subject to disclosure under the California Public Records Act except as provided in subsection (d)(9). No confidentiality restrictions shall be placed by the External Manager or the Placement Agent on any information provided pursuant to this section.

NOTE: Government Code Section 7513.85

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NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to amend the regulations described in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed actions.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to amend CalPERS Board of Administration regulations to implement Government Code Section 7513.85, which requires the Board develop and implement a policy requiring the disclosure of payments to placements agents in connection with CalPERS investments in or through external managers.

II. WRITTEN COMMENT PERIOD

Any person interested may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5 p.m. on May 17, 2010. The Regulations Coordinator must receive all written comments by close of the comment period. Comments may be submitted via fax at (916) 795-4607; email at the following address: veronica_mora@calpers.ca.gov; or mail to the following address:

Veronica Mora, Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, California 94229-2707
Telephone: (916) 795-0713

III. PUBLIC HEARING

Comments on the proposed actions will also be taken at a public hearing to be placed on the agenda of the regularly scheduled meeting of the Investment Committee of the CalPERS Board:

May 17, 2010
9:00 a.m.
California Public Employees' Retirement System
Lincoln Plaza North, Auditorium
400 Q Street, Sacramento, California, 95811.

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IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

V. AUTHORITY AND REFERENCE

The CalPERS Board of Administration has the plenary authority and fiduciary responsibility for investments of moneys and administration of CalPERS, pursuant to the California Constitution (Section 17 of Article XVI) and the Public Employees' Retirement Law (PERL) (California Government Code Title 2, Division 5, Part 3). The proposed regulation is implementing, interpreting and making specific Government Code Section 7513.85.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In the fall of 2009 Assembly Bill 1584 was passed by the Legislature and signed into law by the Governor. This Assembly Bill added Government Code Section 7513.85 which requires the California Public Employees' Retirement System (CalPERS) to adopt a policy requiring the disclosure of payments to placements agents in connection with CalPERS' investments with external managers by June 30, 2010. This regulation is being proposed to comply with the new Government Code requirement.

The proposed regulation will add transparency to the CalPERS Investment decision making process by requiring the disclosure of the existence of relationship between CalPERS managers (defined as External Managers) and placement agents and the fees that are paid to these placement agents. The proposed regulation will help ensure that CalPERS investment decisions are consistent with investment policy and fiduciary responsibilities, to increase the pool of information available to CalPERS Board members, staff and consultants when evaluating an investment opportunity, and to help prevent impropriety and the appearance of impropriety and to provide transparency and confidence in CalPERS investment decision-making processes.

VII. EFFECT ON SMALL BUSINESS

Small businesses that are in the placement agent business or investment management business may be impacted by this proposed regulation. The impacts are reasonable given the public policy concerns related to placement agent, their fees, and their potential involvement in CalPERS' investment decision-making processes. Notwithstanding the foregoing, any "small business" as defined by Government Code Section 11342.610 will not be impacted.

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VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action does not impose a mandate on local agencies or school districts.
- B. **COST OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action does not impact costs or savings for any state agency.
- C. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action does not impose costs or savings for any local agency or school district which must be reimbursed in accordance with Government Code sections 17500-17630.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose non-discretionary costs or savings on local agencies.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action does not impact any federal funding to the state.
- F. **ADVERSE ECONOMIC IMPACT:** The proposed regulatory action has no significant statewide adverse economic impact directly affecting businesses, including the ability of business in California to compete with business in other states.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** The CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- H. **IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA:** The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- I. **EFFECT ON HOUSING COSTS:** The proposed regulatory action has no effect.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is

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proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the above mentioned hearing or during the written comment period.

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Marte Castaños, Senior Staff Counsel
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, California 94229-2707
Telephone: (916) 795-3675

Please direct requests concerning the processing of this regulatory action to Veronica Mora, Regulations Coordinator, at (916) 795-0713 or veronica_mora@calpers.ca.gov.

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation and the Initial Statement of Reasons (ISR). A copy of the proposed text and the ISR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons (FSR) can be obtained, once it has been prepared, by written request to Veronica Mora, Regulations Coordinator, at the address shown in Section II.

XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed amendment to the regulation after the public comment period has closed. It may amend CCR section 559, if the changes are sufficiently related to the original text so that the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional

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public comment period of not less than 15 days prior to the date on which the board adopts, amends, or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments, who testified or submitted written comments at the public hearing, or asked to be kept informed as to the outcome of this regulatory action.

- XIII. One can access the regulatory material regarding this action at www.calpers.ca.gov; About CalPERS; Legislation, Regulations, and Statutes; Regulatory Actions; Current Regulatory Actions.

Attachment 3

Castanos, Marte

To: pfox@rockpointgroup.com

Subject: FW: DRAFT Resposne to Comments -- Placement Agent Reg.

SENT VIA US MAIL

Ms. Fox,

Thank you very much for taking the time to comment on CalPERS proposed rulemaking.

I wanted to respond to each of your points.

Please see below.

Regards,

Marte Castaños
Senior Staff Counsel

From: Pat Fox [mailto:pfox@rockpointgroup.com]

Sent: Monday, May 17, 2010 12:14 PM

To: Mora, Veronica

Cc: Bill Walton; Ron Hoyl; Hank Midgley

Subject: Disclosure of Placement Agents; Written Comments

Veronica – please accept the following comments on behalf of Rockpoint Group, L.L.C. ("Rockpoint"). Rockpoint is a global real estate investment management firm that since 2003, has invested approximately \$3.5 billion of its investors' equity capital in nearly 150 transactions with total peak capitalization of approximately \$18 billion. We applaud the efforts of the Board of Administration to bring transparency to payments to placement agents. In order to ensure confidence and to avoid even the mere appearance of impropriety, it is essential that the CalPERS Board and staff have access to all relevant information. Our comments below are meant not intended to dilute this important effort, but to reflect some practical realities such that fair and adequate reporting will be achievable.

Please note the following comments:

1. **Definition of Amendment.** Logically, an amendment to a partnership agreement to cancel or continue the partnership is not of sufficient materiality for disclosures to be required. Of course any request to extend the term of the partnership should trigger full disclosure.

CalPERS Response: CalPERS believes that a decision to terminate is the type of decision where a placement agent might become involved given the impact on the fund manager's revenues. We are aware that placement agents have been hired for exactly these types of decisions. A placement agent with a contractual right to a percentage of revenues would insert himself or herself into a decision to terminate since the decision would impact the income of the placement agent.

2. **Definition of Placement Agent.** The last sentence of the definition (that excludes employees of the External Manager) should exclude employees, etc. that not only spend time on asset management, but

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also those employees that spend time on all other activities on behalf of the External Manager that are unrelated to placement activities. For example, our director of investor relations spends significant time on asset management, but also reporting, and general investor relations matters.

CalPERS Response: CalPERS believes that many internal employees never meet the definition of a placement agent in the first instance, i.e., they do not meet the definition within the first sentence of the placement agent definition. If they do meet the definition of a placement agent and do not spend one-third or more of their time managing assets, we consider them to be a placement agent. CalPERS considered an exception for all internal employees but indictments within the State of New York and complaints involving Hank Morris indicate that placement agents do become compensated as an in-house employee, officer, or equity owner. Excluding all in-house employees would be too large a loophole.

3. **Disclosure.** The disclosures required pursuant to paragraphs (b) (1) (a), (f), (g), and (h) should each be limited to matters known by the senior officers of the External Manager. While the External Manager could be required to request confirmation of such information, it simply is not in the position to know the details requested by such disclosures.

CalPERS Response: CalPERS believes the External Manager's entire organization has an obligation to take reasonable measures to confirm the accuracy of the statements it asserts pursuant to the policy. Limiting knowledge to those held by "senior officers" would necessitate defining senior officers and would unduly weaken the policy.

4. **Updates.** The requirements of paragraphs 2 and 3 that require the External Manager to report changes in 14 days is simply not realistic as the External Manager will not be in a position to know. For example, if a placement agent were to become registered or unregistered with the SEC, the external Manager is not likely to know, even though such information may well be public. Precision is easily achievable at the time of the investment decision, but monitoring and future reporting are not realistic. An update requirement of information that becomes known is appropriate, of course.

CalPERS Response: CalPERS proposal would require updates where the manager knew or should have known. With regard to future reporting, it may be advisable for external managers to put a mechanism into place to protect the External Manager. Since we do not have privity of contract with the placement agent, the burden falls on the external manager to provide accurate information and update that information as appropriate.

Please feel free to contact mw with any questions that you may have. We are happy to assist these important efforts.

PLEASE NOTE NEW ADDRESS BELOW:

Patrick K. Fox
Managing Member & General Counsel
Rockpoint Group, L.L.C.
Woodlawn Hall at Old Parkland
3953 Maple Avenue, Suite 300
Dallas, TX 75219
972-934-0100
pfox@rockpointgroup.com

Castanos, Marte

To: Sherri Rossoff
Subject: FW: CalPERS Proposed Regulatory Action: Disclosure of Placement Agent Fees, Gifts and Campaign Contributions
Importance: High
Attachments: RCG Feeback to CalPERS Policy.pdf

SENT VIA US MAIL

Dear Sheri,

This is CalPERS response to your May 17, 2010 comments regarding the proposed regulation 559.

CalPERS Response to Comment #1: CalPERS believes that many internal employees never meet the definition of a placement agent in the first instance, i.e., they do not meet the definition within the first sentence of the placement agent definition. If they do meet the definition of a placement agent and do not spend one-third or more of their time managing assets, we consider them to be a placement agent. CalPERS considered an exception for all internal employees but indictments within the State of New York and complaints involving Hank Morris indicate that placement agents do become compensated as an in-house employee, officer, or equity owner. Excluding all in-house employees would be too large a loophole.

CalPERS Response to Comment #2: The Proposed Regulation does not contain such a requirement.

CalPERS Response to Comments #3: CalPERS is interested in receiving disclosure early in the investment decision making process. The proposed 45 days period within the proposed regulation appears reasonable. Because the investment making process varies for different investments and CalPERS Vehicle Managers each have their own process for making investments we can not better define the initiation of investment discussions. We understand that an investment decision might, on occasion, be made in less than 45 days from the initiation of discussions. This is why we added language that requires disclosure "prior to the completion of due diligence" in any event.

Best Regards,

Marte Castaños
Senior Staff Counsel

6/1/2010

May 17, 2010

Thank you for soliciting the Rock Creek Group's comments on the Statement of Policy for Disclosure of Placement Agent Fees, Gifts and Campaign Contributions dated November 16, 2009 (the "Policy"), the contractual language accompanying the Policy and the Notice of Proposed Regulatory Action; Proposed Addition of Section 559 – Disclosure of Placement Agent Fees, Gifts and Campaign Contributions (the "Notice") in connection with the Rock Creek 1848 Fund.

(1) Definition of "Placement Agent" May Be Interpreted to Include In-House Full-Time Employees of the Manager

-The definition of a "Placement Agent" in the Policy could be interpreted to include an in-house client relations or other employee that is a regular full-time employee of the investment manager. It is common industry practice for a hedge fund manager to employ client relations or investor relations staff and such employees may have a portion of their compensation linked in some way to the amount of outside capital they bring into the fund. In this manner, such employees may be considered to have indirectly received an incentive payment on a CalPERS investment and therefore be deemed a "Placement Agent" under the Policy. If that is not the intent, a modification of the definition to exclude an in-house client relations employee may be necessary. Although the Notice does indicate that an employee of a manager who spends one-third or more of their time managing assets would not be a placement agent, most in-house investor relations employees are dedicated full-time to investor relations duties and therefore may not fall within the exemption. In addition, whether or not an employee or principal of a manager is spending certain time "managing assets" as opposed to performing investor relations or another non-strictly investment related function is difficult to determine. Many employees and principals of investment managers spend their days transiting between various roles. Calculating the percentage of time an individual spends on specific job functions may, in some instances, be a difficult task, and difficult to document.

(2) Mandatory Adherence to Future Amendments to the Policy May Lead to Compulsory Redemption

-The contractual language to which each investment manager is required to agree contains a provision requiring the manager be bound by any future amendments to the Policy. Some managers would find this objectionable on the basis that requiring amendments to the Policy imposed upon them, without allowing the manager any discretion on the matter, may result in a theoretical risk because the manager is agreeing to provisions before knowing what they will say. There is the possibility that forcing managers to accept an amendment could lead to CalPERS having its investment in the fund compulsorily redeemed if such amendment was unacceptable to the manager once the manager received the amendment and reviewed it. One possible risk in taking that approach is that managers may agree and sign on to the policy, but not actually focus on the amendment once it is circulated, and whether or not they in actuality can indeed comply with it.

(3) Clarification on When Investment Discussions are Deemed Initiated Would be Helpful in Meeting the 45 Day Requirement

-There is no clear specificity of when "investment discussions" are deemed "initiated" for the 45 day requirement found in Section IV(A)(1) of the Policy. As you know, Rock Creek engages in a lengthy due diligence investigation with respect to the underlying managers in the Rock Creek 1848 Fund, L.P. portfolio. In some instances, Rock Creek's relationship with a manager may start as informal discussions the initiation of which may occur months prior to any investment being completed. Because Section IV(A)(1) of the Policy does not specifically define the threshold whereby discussions are deemed "initiated" it would be difficult to determine when the 45 day countdown begins. As such, there may be a situation where Rock Creek, in an effort to comply with the 45 day requirement in the Policy, is forced to seek from the potential underlying manager the executed Placement Agent Disclosure Form (as defined in the Policy) at an early stage of discussions and therefore reveal Calpers identity as Rock Creek's client at what may be an inappropriately premature point in the due diligence process. In the Notice, the 45 requirement is qualified with the added language that "in any event" the Placement Agent Disclosure Form is required "prior to the completion of due diligence." From Rock Creek's perspective, this would alleviate concern over the ambiguity of when "investment discussions" have been "initiated" as long as it is generally understood that the due diligence process continues up until the day of the investment.

If you would like to discuss this further, or if we can be of any assistance, please do not hesitate to contact us. I can be reached at 202 331 3425.

Sherri Rossoff
Rock Creek Group, LP